



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1267/1
EAW:kjf

2021 ASSEMBLY BILL 630

October 21, 2021 - Introduced by Representatives DITTRICH, PENTERMAN, GUNDRUM, MURSAU, TUSLER, SNYDER and DOYLE. Referred to Committee on Family Law.

1 **AN ACT to amend** 48.195 (2) (d) 6., 48.235 (4) (a) 3., 48.235 (4m) (a) 3., 48.29 (1),
2 48.29 (3), 48.30 (2), 48.31 (1), 48.31 (2), 48.31 (4), 48.368 (1), 48.38 (5) (c) 6. b.,
3 48.40 (1r), 48.415 (1) (a) 1., 48.415 (3) (a), 48.415 (5) (intro.), 48.415 (10) (a),
4 48.415 (10) (b), 48.417 (1) (intro.), 48.417 (1) (a), 48.417 (1) (b), 48.417 (1) (c),
5 48.417 (1) (d), 48.417 (2) (intro.), 48.417 (3), 48.417 (4), 48.42 (1) (intro.), 48.42
6 (1g) (a) (intro.), 48.42 (1g) (b), 48.42 (1g) (c), 48.42 (1m) (a), 48.42 (1m) (b), 48.42
7 (1m) (c), 48.42 (2) (intro.), 48.42 (2) (bm) (intro.), 48.42 (2g) (a), 48.42 (2g) (ag),
8 48.42 (2m), 48.42 (4) (title), 48.42 (4) (a), 48.42 (4) (b) 3., 48.42 (4) (b) 4. (intro.),
9 48.422 (title), 48.422 (1), 48.422 (2), 48.422 (3), 48.422 (4), 48.422 (6) (b), 48.422
10 (7) (intro.), 48.422 (7) (a), 48.422 (7) (bm), 48.422 (7) (br), 48.422 (8), 48.422 (9)
11 (a), 48.423 (2) (intro.), 48.424 (1) (intro.), 48.424 (4) (intro.), 48.424 (4) (b),
12 48.425 (1) (am) 2., 48.425 (1) (cm), 48.425 (1m), 48.425 (3), 48.427 (2), 48.43 (1)
13 (intro.), 48.46 (2), 48.46 (3) and 48.83 (1); and **to create** 48.23 (2) (bm), 48.29

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1 (1d) and 48.42 (1d) of the statutes; **relating to:** termination of parental rights
2 by motion in CHIPS proceeding.

Analysis by the Legislative Reference Bureau

This bill allows a motion for termination of parental rights (TPR) to be filed in a proceeding in which it is alleged that a child is in need of protection or services (CHIPS).

Under current law, a TPR proceeding may be initiated only by filing a petition with the juvenile court. A TPR petition initiates a new proceeding that is unrelated to any other ongoing proceedings concerning the child in the juvenile court. This bill allows a county department of human or social services, the child's parent, and other specified entities and individuals to initiate a TPR proceeding by filing a motion for TPR in an ongoing CHIPS proceeding.

Also, under current law, with certain exceptions, a parent does not have a right to legal representation in a CHIPS proceeding, but does have a statutory right to legal representation in a TPR proceeding, including the right to be represented by a public defender if indigent. Under this bill, beginning when a TPR motion is filed in a CHIPS proceeding as described above, the parent has a statutory right to legal representation in the CHIPS proceeding, including the right to be represented by a public defender if indigent.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 48.195 (2) (d) 6. of the statutes is amended to read:

4 48.195 (2) (d) 6. A court conducting proceedings under s. 48.21, proceedings
5 relating to a petition under s. 48.13 (2m) or 48.42 (1) or a motion under s. 48.42 (1d),
6 or dispositional proceedings under subch. VI or VIII relating to the child, the county
7 corporation counsel, district attorney, or agency legal counsel representing the
8 interests of the public in those proceedings, or the guardian ad litem representing
9 the interests of the child in those proceedings.

10 **SECTION 2.** 48.23 (2) (bm) of the statutes is created to read:

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1 48.23 (2) (bm) If a motion to terminate parental rights is filed under s. 48.42
2 (1d) in a proceeding involving a child alleged to be in need of protection or services
3 under s. 48.13, any parent who appears before the court shall be represented by
4 counsel as provided under par. (b), beginning with the filing of the motion under s.
5 48.42 (1d).

6 **SECTION 3.** 48.235 (4) (a) 3. of the statutes is amended to read:

7 48.235 (4) (a) 3. Petition or file a motion for termination of parental rights or
8 any other matter specified under s. 48.14.

9 **SECTION 4.** 48.235 (4m) (a) 3. of the statutes is amended to read:

10 48.235 (4m) (a) 3. Petition or file a motion for termination of parental rights
11 or any other matter specified under s. 48.14 after the child is born.

12 **SECTION 5.** 48.29 (1) of the statutes is amended to read:

13 48.29 (1) The Except as provided under sub. (1d), the child, the child's parent,
14 guardian or legal custodian, the expectant mother, or the unborn child's guardian ad
15 litem, either before or during the plea hearing, may file a written request with the
16 clerk of the court or other person acting as the clerk for a substitution of the judge
17 assigned to the proceeding. Upon filing the written request, the filing party shall
18 immediately mail or deliver a copy of the request to the judge named in the request.
19 When any person has the right to request a substitution of judge, that person's
20 counsel or guardian ad litem may file the request. Not more than one such written
21 request may be filed in any one proceeding, nor may any single request name more
22 than one judge. This section does not apply to proceedings under s. 48.21 or 48.213.

23 **SECTION 6.** 48.29 (1d) of the statutes is created to read:

24 48.29 (1d) The child, the child's parent, guardian or legal custodian, the
25 expectant mother, or the unborn child's guardian ad litem may request substitution

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1 of the judge under sub. (1) after the plea hearing in a proceeding if all of the following
2 apply:

3 (a) A motion to terminate parental rights is filed under s. 48.42 (1d) in the
4 proceeding.

5 (b) There has not been a prior request for substitution under sub. (1) in the
6 proceeding.

7 (c) The request is filed before or during the hearing on the motion to terminate
8 parental rights under s. 48.422 (1).

9 **SECTION 7.** 48.29 (3) of the statutes is amended to read:

10 48.29 (3) Subsections (1) ~~and~~ to (1m) do not apply in any proceeding under s.
11 48.375 (7). For proceedings under s. 48.375 (7), the minor may select the judge whom
12 she wishes to be assigned to the proceeding and that judge shall be assigned to the
13 proceeding.

14 **SECTION 8.** 48.30 (2) of the statutes is amended to read:

15 48.30 (2) At the commencement of the hearing under this section the child and
16 the parent, guardian, legal custodian, or Indian custodian; the child expectant
17 mother, her parent, guardian, legal custodian, or Indian custodian, and the unborn
18 child's guardian ad litem; or the adult expectant mother and the unborn child's
19 guardian ad litem; shall be advised of the rights specified in s. 48.243 and shall be
20 informed that a request for a jury trial or for a substitution of judge under s. 48.29
21 must be made before the end of the plea hearing or is waived, except as provided in
22 s. 48.29 (1d). Nonpetitioning parties, including the child, shall be granted a
23 continuance of the plea hearing if they wish to consult with an attorney on the
24 request for a jury trial or substitution of a judge.

25 **SECTION 9.** 48.31 (1) of the statutes is amended to read:

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1 48.31 (1) In this section, “fact-finding hearing” means a hearing to determine
2 if the allegations in a petition under s. 48.13 or 48.133 or a petition or motion to
3 terminate parental rights are proved by clear and convincing evidence. In the case
4 of a petition or motion to terminate parental rights to an Indian child, “fact-finding
5 hearing” means a hearing to determine if the allegations in the petition, other than
6 the allegations under s. 48.42 (1) (e) relating to serious emotional or physical
7 damage, are proved by clear and convincing evidence and if the allegations under s.
8 48.42 (1) (e) relating to serious emotional or physical damage are proved beyond a
9 reasonable doubt as provided in s. 48.028 (4) (e) 1., unless partial summary judgment
10 on the grounds for termination of parental rights is granted.

11 **SECTION 10.** 48.31 (2) of the statutes is amended to read:

12 48.31 (2) The hearing shall be to the court unless the child, the child’s parent,
13 guardian, or legal custodian, the unborn child’s guardian ad litem, or the expectant
14 mother of the unborn child exercises the right to a jury trial by demanding a jury trial
15 at any time before or during the plea hearing. If a jury trial is demanded in a
16 proceeding under s. 48.13 or 48.133, the jury shall consist of 6 persons, unless a
17 motion is filed under s. 48.42 (1d). If a jury trial is demanded in a proceeding under
18 s. 48.42, including on a motion filed under s. 48.42 (1d), the jury shall consist of 12
19 persons unless the parties agree to a lesser number. Chapters 756 and 805 shall
20 govern the selection of jurors. If the hearing involves a child victim or witness, as
21 defined in s. 950.02, the court may order that a deposition be taken by audiovisual
22 means and allow the use of a recorded deposition under s. 967.04 (7) to (10) and, with
23 the district attorney, shall comply with s. 971.105. At the conclusion of the hearing,
24 the court or jury shall make a determination of the facts, except that in a case alleging
25 a child or an unborn child to be in need of protection or services under s. 48.13 or

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1 48.133, the court shall make the determination under s. 48.13 (intro.) or 48.133
2 relating to whether the child or unborn child is in need of protection or services that
3 can be ordered by the court. If the court finds that the child or unborn child is not
4 within the jurisdiction of the court or, in a case alleging a child or an unborn child
5 to be in need of protection or services under s. 48.13 or 48.133, that the child or
6 unborn child is not in need of protection or services that can be ordered by the court,
7 or if the court or jury finds that the facts alleged in the petition, or in a motion to
8 terminate parental rights under s. 48.42 (1d), have not been proved, the court shall
9 dismiss the petition or motion with prejudice.

10 **SECTION 11.** 48.31 (4) of the statutes is amended to read:

11 48.31 (4) The court or jury shall make findings of fact and the court shall make
12 conclusions of law relating to the allegations of a petition filed under s. 48.13, 48.133
13 or 48.42 (1) or a motion to terminate parental rights under s. 48.42 (1d), except that
14 the court shall make findings of fact relating to whether the child or unborn child is
15 in need of protection or services which can be ordered by the court. In cases alleging
16 a child to be in need of protection or services under s. 48.13 (11), the court may not
17 find that the child is suffering emotional damage unless a licensed physician
18 specializing in psychiatry or a licensed psychologist appointed by the court to
19 examine the child has testified at the hearing that in his or her opinion the condition
20 exists, and adequate opportunity for the cross-examination of the physician or
21 psychologist has been afforded. The judge may use the written reports if the right
22 to have testimony presented is voluntarily, knowingly and intelligently waived by
23 the guardian ad litem or legal counsel for the child and the parent or guardian. In
24 cases alleging a child to be in need of protection or services under s. 48.13 (11m) or
25 an unborn child to be in need of protection or services under s. 48.133, the court may

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1 not find that the child or the expectant mother of the unborn child is in need of
2 treatment and education for needs and problems related to the use or abuse of alcohol
3 beverages, controlled substances or controlled substance analogs and its medical,
4 personal, family or social effects unless an assessment for alcohol and other drug
5 abuse that conforms to the criteria specified under s. 48.547 (4) has been conducted
6 by an approved treatment facility.

7 **SECTION 12.** 48.368 (1) of the statutes is amended to read:

8 48.368 (1) If a petition or motion for termination of parental rights is filed
9 under s. ~~48.41 or 48.415~~ 48.42 or an appeal from a judgment terminating or denying
10 termination of parental rights is filed during the year in which a dispositional order
11 under s. 48.355, an extension order under s. 48.365, a voluntary agreement for
12 placement of the child under s. 48.63, or a guardianship order under s. 48.977 or
13 48.9795, ch. 54, 2017 stats., or ch. 880, 2003 stats., is in effect, the dispositional or
14 extension order, voluntary agreement, or guardianship order shall remain in effect
15 until all proceedings related to the filing of the petition or motion for termination of
16 parental rights or an appeal are concluded.

17 **SECTION 13.** 48.38 (5) (c) 6. b. of the statutes is amended to read:

18 48.38 (5) (c) 6. b. Having a petition or motion for the involuntary termination
19 of parental rights filed on behalf of the child.

20 **SECTION 14.** 48.40 (1r) of the statutes is amended to read:

21 48.40 (1r) "Parent" has the meaning given in s. 48.02 (13), except that for
22 purposes of filing a petition or motion seeking the involuntary termination of
23 parental rights under s. 48.415 to a nonmarital child who is not adopted or whose
24 parents do not subsequently intermarry under s. 767.803 and whose paternity has
25 not been established, of finding grounds under s. 48.415 for the involuntary

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1 termination of parental rights to such a child, and of terminating the parental rights
2 to such a child on a ground specified in s. 48.415, “parent” includes a person who may
3 be the parent of such a child.

4 **SECTION 15.** 48.415 (1) (a) 1. of the statutes is amended to read:

5 48.415 (1) (a) 1. That the child has been left without provision for the child’s
6 care or support, the petitioner or movant has investigated the circumstances
7 surrounding the matter and for 60 days the petitioner or movant has been unable to
8 find either parent.

9 **SECTION 16.** 48.415 (3) (a) of the statutes is amended to read:

10 48.415 (3) (a) The parent is presently, and for a cumulative total period of at
11 least 2 years within the 5 years immediately prior to the filing of the petition or
12 motion to terminate parental rights has been, an inpatient at one or more hospitals
13 as defined in s. 50.33 (2) (a), (b) or (c), licensed treatment facilities as defined in s.
14 51.01 (2) or state treatment facilities as defined in s. 51.01 (15) on account of mental
15 illness as defined in s. 51.01 (13) (a) or (b), developmental disability as defined in s.
16 55.01 (2), or other like incapacities, as defined in s. 55.01 (5);

17 **SECTION 17.** 48.415 (5) (intro.) of the statutes is amended to read:

18 48.415 (5) CHILD ABUSE. (intro.) Child abuse, which shall be established by
19 proving that the parent has exhibited a pattern of physically or sexually abusive
20 behavior which is a substantial threat to the health of the child who is the subject
21 of the petition or motion to terminate parental rights and proving either of the
22 following:

23 **SECTION 18.** 48.415 (10) (a) of the statutes is amended to read:

24 48.415 (10) (a) That the child who is the subject of the petition or motion to
25 terminate parental rights has been adjudged to be in need of protection or services

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1 under s. 48.13 (2), (3) or (10); or that the child who is the subject of the petition or
2 motion was born after the filing of a petition or motion under this subsection whose
3 subject is a sibling of the child.

4 **SECTION 19.** 48.415 (10) (b) of the statutes is amended to read:

5 48.415 (10) (b) That, within 3 years prior to the date the court adjudged the
6 child to be in need of protection or services as specified in par. (a) or, in the case of
7 a child born after the filing of a petition or motion to terminate parental rights as
8 specified in par. (a), within 3 years prior to the date of birth of the child, a court has
9 ordered the termination of parental rights with respect to another child of the person
10 whose parental rights are sought to be terminated on one or more of the grounds
11 specified in this section.

12 **SECTION 20.** 48.417 (1) (intro.) of the statutes is amended to read:

13 48.417 (1) FILING OR JOINING IN PETITION OR MOTION; WHEN REQUIRED. (intro.)
14 Subject to sub. (2), an agency or the district attorney, corporation counsel, or other
15 appropriate official designated under s. 48.09 shall file a petition under s. 48.42 (1)
16 or a motion under s. 48.42 (1d) to terminate the parental rights of a parent or the
17 parents of a child, or, if a petition under s. 48.42 (1) or motion under s. 48.42 (1d) to
18 terminate those parental rights has already been filed, the agency, district attorney,
19 corporation counsel or other appropriate official shall join in the petition or motion,
20 if any of the following circumstances apply:

21 **SECTION 21.** 48.417 (1) (a) of the statutes is amended to read:

22 48.417 (1) (a) The child has been placed outside of his or her home, as described
23 in s. 48.365 (1) or 938.365 (1), in a foster home, group home, nonsecured residential
24 care center for children and youth, or shelter care facility for 15 of the most recent
25 22 months, not including any period during which the child was a runaway from the

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1 out-of-home placement or was residing in a trial reunification home. If the
2 circumstances specified in this paragraph apply, the petition or motion to terminate
3 parental rights shall be filed or joined in by the last day of the 15th month, as
4 described in this paragraph, for which the child was placed outside of his or her home.

5 **SECTION 22.** 48.417 (1) (b) of the statutes is amended to read:

6 48.417 (1) (b) A court of competent jurisdiction has found under s. 48.13 (2) or
7 under a law of any other state or a federal law that is comparable to s. 48.13 (2) that
8 the child was abandoned when he or she was under one year of age or has found that
9 the parent abandoned the child when the child was under one year of age in violation
10 of s. 948.20 or in violation of the law of any other state or federal law, if that violation
11 would be a violation of s. 948.20 if committed in this state. If the circumstances
12 specified in this paragraph apply, the petition or motion to terminate parental rights
13 shall be filed or joined in within 60 days after the date on which the court of
14 competent jurisdiction found that the child was abandoned as described in this
15 paragraph.

16 **SECTION 23.** 48.417 (1) (c) of the statutes is amended to read:

17 48.417 (1) (c) A court of competent jurisdiction has found that the parent has
18 committed, has aided or abetted the commission of, or has solicited, conspired, or
19 attempted to commit, a violation of s. 940.01, 940.02, 940.03, or 940.05 or a violation
20 of the law of any other state or federal law, if that violation would be a violation of
21 s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, and that the victim of
22 that violation is a child of the parent. If the circumstances specified in this paragraph
23 apply, the petition or motion to terminate parental rights shall be filed or joined in
24 within 60 days after the date on which the court assigned to exercise jurisdiction
25 under this chapter determines, based on a finding that a circumstance specified in

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1 this paragraph applies, that reasonable efforts to make it possible for the child to
2 return safely to his or her home are not required.

3 **SECTION 24.** 48.417 (1) (d) of the statutes is amended to read:

4 48.417 (1) (d) A court of competent jurisdiction has found that the parent has
5 committed a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4), or
6 (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a), (3) (a), or (5) (a) 1., 2.,
7 or 3., 948.051, or 948.085, a violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies,
8 or a violation of the law of any other state or federal law, if that violation would be
9 a violation listed under this paragraph if committed in this state, and that the
10 violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial
11 bodily harm, as defined in s. 939.22 (38), to the child or another child of the parent.
12 If the circumstances specified in this paragraph apply, the petition or motion to
13 terminate parental rights shall be filed or joined in within 60 days after the date on
14 which the court assigned to exercise jurisdiction under this chapter determines,
15 based on a finding that a circumstance specified in this paragraph applies, that
16 reasonable efforts to make it possible for the child to return safely to his or her home
17 are not required.

18 **SECTION 25.** 48.417 (2) (intro.) of the statutes is amended to read:

19 48.417 (2) **FILING OR JOINING IN PETITION OR MOTION; WHEN NOT REQUIRED.** (intro.)
20 Notwithstanding that any of the circumstances specified in sub. (1) (a), (b), (c) or (d)
21 may apply, an agency or the district attorney, corporation counsel or other
22 appropriate official designated under s. 48.09 need not file a petition under s. 48.42
23 (1) or motion under s. 48.42 (1d) to terminate the parental rights of a parent or the
24 parents of a child, or, if a petition ~~under s. 48.42 (1)~~ or motion to terminate those
25 parental rights has already been filed, the agency, district attorney, corporation

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1 counsel or other appropriate official need not join in the petition, if any of the
2 following circumstances apply:

3 **SECTION 26.** 48.417 (3) of the statutes is amended to read:

4 48.417 (3) CONCURRENT ADOPTION EFFORTS REQUIRED. If a petition or motion to
5 terminate parental rights is filed or joined in as required under sub. (1), the agency
6 primarily responsible for providing services to the child under a court order shall,
7 during the pendency of the proceeding on the petition or motion, work with the
8 agency identified in the report under s. 48.425 (1) (f) that would be responsible for
9 accomplishing the adoption of the child in processing and approving a qualified
10 family for the adoption of the child.

11 **SECTION 27.** 48.417 (4) of the statutes is amended to read:

12 48.417 (4) NOTICE TO DEPARTMENT. If a petition or motion to terminate parental
13 rights is filed or joined in as required under sub. (1), the person who filed or joined
14 in the petition or motion shall notify the department of that filing or joinder.

15 **SECTION 28.** 48.42 (1) (intro.) of the statutes is amended to read:

16 48.42 (1) PETITION. (intro.) ~~A~~ Except as provided under sub. (1d), a proceeding
17 for the termination of parental rights shall be initiated by petition which may be filed
18 by the child's parent, an agency or a person authorized to file a petition under s. 48.25
19 or 48.835. The petition shall be entitled "In the interest of (child's name), a
20 person under the age of 18" and shall set forth with specificity:

21 **SECTION 29.** 48.42 (1d) of the statutes is created to read:

22 48.42 (1d) MOTION TO TERMINATE PARENTAL RIGHTS OF A CHILD ALLEGED TO BE IN
23 NEED OF PROTECTION OR SERVICES. If there is an open proceeding under s. 48.13 for the
24 child, the termination of parental rights may be initiated by filing a motion in that
25 open proceeding. A motion under this subsection may be filed by the child's parent,

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1 an agency, or a person authorized to file a petition under s. 48.25, who is a party to
2 the open proceeding, and shall set forth with specificity the information required in
3 sub. (1) (c) and (e). A motion filed under this subsection is subject to the procedures
4 of this subchapter.

5 **SECTION 30.** 48.42 (1g) (a) (intro.) of the statutes is amended to read:

6 48.42 (1g) (a) (intro.) Except as provided in par. (c), if the petition or motion to
7 terminate parental rights is filed by a person or agency other than the district
8 attorney, corporation counsel, or other appropriate official under s. 48.09; if the
9 petition or motion seeks to terminate the parental rights of a person who may be the
10 father of a nonmarital child who is under one year of age at the time the petition or
11 motion is filed, who is not adopted or whose parents do not subsequently intermarry
12 under s. 767.803, and whose paternity has not been established; and if the mother
13 of the child has voluntarily consented to or seeks to voluntarily consent to the
14 termination of her parental rights to the child, the petitioner or movant may file with
15 the petition or motion an affidavit signed by the mother that includes all of the
16 following:

17 **SECTION 31.** 48.42 (1g) (b) of the statutes is amended to read:

18 48.42 (1g) (b) The petitioner or movant shall notify any man identified in the
19 affidavit under par. (a) as an alleged father of his right to file a declaration of paternal
20 interest under s. 48.025 before the birth of the child, within 14 days after the birth
21 of the child, or within 21 days after the date on which the notice is mailed, whichever
22 is later; of the birth date or anticipated birth date of the child; and of the
23 consequences of filing or not filing a declaration of paternal interest. The petitioner
24 or movant shall include with the notice a copy of the form required to file a

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1 declaration of paternal interest under s. 48.025. The notice shall be sent by certified
2 mail to the last-known address of the alleged father.

3 **SECTION 32.** 48.42 (1g) (c) of the statutes is amended to read:

4 48.42 **(1g)** (c) If an affidavit under par. (a) is not filed with the petition or
5 motion, notice shall be given to an alleged father under sub. (2).

6 **SECTION 33.** 48.42 (1m) (a) of the statutes is amended to read:

7 48.42 **(1m)** (a) If the petition filed under sub. (1) or motion filed under sub. (1d)
8 includes a statement of the grounds for involuntary termination of parental rights
9 under sub. (1) (c) 2., the petitioner or movant may, at the time the petition under sub.
10 (1) or motion under sub. (1d) is filed, also petition the court for a temporary order and
11 an injunction prohibiting the person whose parental rights are sought to be
12 terminated from visiting or contacting the child who is the subject of the petition
13 under sub. (1) or motion. Any petition under this paragraph shall allege facts
14 sufficient to show that prohibiting visitation or contact would be in the best interests
15 of the child.

16 **SECTION 34.** 48.42 (1m) (b) of the statutes is amended to read:

17 48.42 **(1m)** (b) Subject to par. (e), the court may issue the temporary order ex
18 parte or may refuse to issue the temporary order and hold a hearing on whether to
19 issue an injunction. The temporary order is in effect until a hearing is held on the
20 issuance of an injunction. The court shall hold a hearing on the issuance of an
21 injunction on or before the date of the hearing on the petition or motion to terminate
22 parental rights under s. 48.422 (1).

23 **SECTION 35.** 48.42 (1m) (c) of the statutes is amended to read:

24 48.42 **(1m)** (c) Notwithstanding any other order under s. 48.355 (3), the court,
25 subject to par. (e), may grant an injunction prohibiting the respondent from visiting

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1 or contacting the child if the court determines that the prohibition would be in the
2 best interests of the child. An injunction under this subsection is effective according
3 to its terms but may not remain in effect beyond the date the court dismisses the
4 petition or motion for termination of parental rights under s. 48.427 (2) or issues an
5 order terminating parental rights under s. 48.427 (3).

6 **SECTION 36.** 48.42 (2) (intro.) of the statutes is amended to read:

7 48.42 (2) WHO MUST BE SUMMONED. (intro.) Except as provided in sub. (2m), the
8 petitioner or movant shall cause the summons and petition or motion to terminate
9 parental rights to be served upon the following persons:

10 **SECTION 37.** 48.42 (2) (bm) (intro.) of the statutes is amended to read:

11 48.42 (2) (bm) (intro.) If the child is a nonmarital child who is under one year
12 of age at the time the petition or motion to terminate parental rights is filed and who
13 is not adopted or whose parents do not subsequently intermarry under s. 767.803 and
14 whose paternity has not been established and if an affidavit under sub. (1g) (a) is filed
15 with the petition or motion to terminate parental rights:

16 **SECTION 38.** 48.42 (2g) (a) of the statutes is amended to read:

17 48.42 (2g) (a) In addition to causing the summons and petition or motion to
18 terminate parental rights to be served as required under sub. (2), the petitioner or
19 movant shall also notify any foster parent or other physical custodian described in
20 s. 48.62 (2) of the child of all hearings on the petition or motion. The first notice to
21 any foster parent or other physical custodian described in s. 48.62 (2) shall be
22 written, shall have a copy of the petition or motion attached to it, shall state the
23 nature, location, date, and time of the initial hearing and shall be mailed to the
24 last-known address of the foster parent or other physical custodian described in s.
25 48.62 (2). Thereafter, notice of hearings may be given by telephone at least 72 hours

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1 before the time of the hearing. The person giving telephone notice shall place in the
2 case file a signed statement of the time notice was given and the person to whom he
3 or she spoke.

4 **SECTION 39.** 48.42 (2g) (ag) of the statutes is amended to read:

5 48.42 **(2g)** (ag) In the case of an involuntary termination of parental rights to
6 a child whom the petitioner or movant knows or has reason to know is an Indian
7 child, the petitioner or movant shall cause the summons and petition or motion to be
8 served on the Indian child's parent and Indian custodian in the manner specified in
9 s. 48.028 (4) (a). In like manner, the petitioner or movant shall also notify the Indian
10 child's tribe of all hearings on the petition or motion. The first notice to an Indian
11 child's tribe shall be written, shall have a copy of the petition or motion attached to
12 it, and shall state the nature, location, date, and time of the initial hearing. No
13 hearing may be held on the petition or motion until at least 10 days after receipt of
14 notice of the hearing by the Indian child's parent, Indian custodian, and tribe or, if
15 the identity or location of the Indian child's parent, Indian custodian, or tribe cannot
16 be determined, until at least 15 days after receipt of the notice by the U.S. secretary
17 of the interior. On request of the Indian child's parent, Indian custodian, or tribe, the
18 court shall grant a continuance of up to 20 additional days to enable the requester
19 to prepare for the hearing.

20 **SECTION 40.** 48.42 (2m) of the statutes is amended to read:

21 48.42 **(2m)** NOTICE NOT REQUIRED. (a) *Parent as a result of sexual assault.*
22 Except as provided in this paragraph, notice is not required to be given to a person
23 who may be the father of a child conceived as a result of a sexual assault in violation
24 of s. 940.225 (1), (2) or (3), 948.02 (1) or (2), 948.025, or 948.085 if a physician attests
25 to his or her belief that a sexual assault as specified in this paragraph has occurred

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1 or if the person who may be the father of the child has been convicted of sexual assault
2 as specified in this paragraph for conduct which may have led to the child's
3 conception. A person who under this paragraph is not given notice does not have
4 standing to appear and contest a petition or motion for the termination of his
5 parental rights, present evidence relevant to the issue of disposition, or make
6 alternative dispositional recommendations. This paragraph does not apply to a
7 person who may be the father of a child conceived as a result of a sexual assault in
8 violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time
9 of the sexual assault.

10 (b) *Parent of nonmarital child.* A person who may be the father of a nonmarital
11 child who is not adopted or whose parents do not subsequently intermarry under s.
12 767.803 and whose paternity has not been established, by virtue of the fact that he
13 has engaged in sexual intercourse with the mother of the child, is considered to be
14 on notice that a pregnancy and a termination of parental rights proceeding
15 concerning the child may occur, and has the duty to protect his own rights and
16 interests. He is therefore entitled to actual notice of such a proceeding only as
17 provided in sub. (2) (b) or (bm). A person who is not entitled to notice under sub. (2)
18 (b) or (bm) does not have standing to appear and contest a petition or motion for the
19 termination of his parental rights, present evidence relevant to the issue of
20 disposition, or make alternative dispositional recommendations.

21 **SECTION 41.** 48.42 (4) (title) of the statutes is amended to read:

22 48.42 (4) (title) MANNER OF SERVING SUMMONS AND PETITION OR MOTION TO
23 TERMINATE PARENTAL RIGHTS.

24 **SECTION 42.** 48.42 (4) (a) of the statutes is amended to read:

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1 48.42 (4) (a) *Personal service*. Except as provided in this paragraph, par. (b),
2 and sub. (2g) (ag), a copy of the summons and petition or motion to terminate
3 parental rights shall be served personally upon the parties specified in sub. (2), if
4 known, at least 7 days before the date of the hearing. Service of summons is not
5 required if the party submits to the jurisdiction of the court. Service upon parties
6 who are not natural persons and upon persons under a disability shall be as
7 prescribed in s. 801.11.

8 **SECTION 43.** 48.42 (4) (b) 3. of the statutes is amended to read:

9 48.42 (4) (b) 3. At the time the petition or motion to terminate parental rights
10 is filed, the petitioner or movant may move the court for an order waiving the
11 requirement of constructive notice to a person who, although his identity is
12 unknown, may be the father of a nonmarital child.

13 **SECTION 44.** 48.42 (4) (b) 4. (intro.) of the statutes is amended to read:

14 48.42 (4) (b) 4. (intro.) A notice published under this subsection shall be
15 published as a class 1 notice under ch. 985. In determining which newspaper is likely
16 to give notice as required under s. 985.02 (1), the petitioner, movant, or court shall
17 consider the residence of the party, if known, or the residence of the relatives of the
18 party, if known, or the last-known location of the party. If the party's post-office
19 address is known or can, with due diligence, be ascertained, a copy of the summons
20 and petition or motion to terminate parental rights shall be mailed to the party upon
21 or immediately prior to the first publication. The mailing may be omitted if the
22 petitioner or movant shows that the post-office address cannot be obtained with due
23 diligence. Except as provided in subd. 5., the notice shall include the date, place and
24 circuit court branch for the hearing, the court file number, the name, address and
25 telephone number of the petitioner's or movant's attorney and information the court

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1 determines to be necessary to give effective notice to the party or parties. Such
2 information shall include the following, if known:

3 **SECTION 45.** 48.422 (title) of the statutes is amended to read:

4 **48.422 (title) Hearing on the petition or motion to terminate parental**
5 **rights.**

6 **SECTION 46.** 48.422 (1) of the statutes is amended to read:

7 48.422 (1) Except as provided in s. 48.42 (2g) (ag), the hearing on the petition
8 or motion to terminate parental rights shall be held within 30 days after the petition
9 or motion is filed. At the hearing on the petition or motion to terminate parental
10 rights the court shall determine whether any party wishes to contest the petition or
11 motion and inform the parties of their rights under sub. (4) and s. 48.423.

12 **SECTION 47.** 48.422 (2) of the statutes is amended to read:

13 48.422 (2) Except as provided in s. 48.42 (2g) (ag), if the petition or motion to
14 terminate parental rights is contested the court shall set a date for a fact-finding
15 hearing to be held within 45 days after the hearing on the petition or motion, unless
16 all of the necessary parties agree to commence with the hearing on the merits
17 immediately.

18 **SECTION 48.** 48.422 (3) of the statutes is amended to read:

19 48.422 (3) If the petition or motion to terminate parental rights is not contested
20 the court shall hear testimony in support of the allegations in the petition or motion,
21 including testimony as required in sub. (7).

22 **SECTION 49.** 48.422 (4) of the statutes is amended to read:

23 48.422 (4) Any party who is necessary to the proceeding or whose rights may
24 be affected by an order terminating parental rights shall be granted a jury trial upon

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1 request if the request is made before the end of the initial hearing on the petition or
2 motion to terminate parental rights.

3 **SECTION 50.** 48.422 (6) (b) of the statutes is amended to read:

4 48.422 (6) (b) If the court determines that an unknown person may be the
5 father of the child and notice to that person has not been waived under s. 48.42 (4)
6 (b) 3., the court shall determine whether constructive notice will substantially
7 increase the likelihood of notice to that person. If the court does determine that it
8 would substantially increase the likelihood of notice and the petitioner or movant
9 has not already caused the notice to be published or the court determines that the
10 publication used was not sufficient, the court shall adjourn the hearing for a period
11 not to exceed 30 days and shall order constructive notice under s. 48.42 (4) (b). If the
12 court determines that constructive notice will not substantially increase the
13 likelihood of notice to that person, the court shall order that the hearing proceed.

14 **SECTION 51.** 48.422 (7) (intro.) of the statutes is amended to read:

15 48.422 (7) (intro.) Before accepting an admission of the alleged facts in a
16 petition or motion to terminate parental rights, the court shall:

17 **SECTION 52.** 48.422 (7) (a) of the statutes is amended to read:

18 48.422 (7) (a) Address the parties present and determine that the admission
19 is made voluntarily with understanding of the nature of the acts alleged in the
20 petition or motion to terminate parental rights and the potential dispositions.

21 **SECTION 53.** 48.422 (7) (bm) of the statutes is amended to read:

22 48.422 (7) (bm) Establish whether a proposed adoptive parent of the child has
23 been identified. If a proposed adoptive parent of the child has been identified and
24 the proposed adoptive parent is not a relative of the child, the court shall order the
25 petitioner or movant to submit a report to the court containing the information

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1 specified in s. 48.913 (7). The court shall review the report to determine whether any
2 payments or agreement to make payments set forth in the report are coercive to the
3 birth parent of the child or to an alleged ~~to~~ presumed father of the child or are
4 impermissible under s. 48.913 (4). Making any payment to or on behalf of the birth
5 parent of the child, an alleged or presumed father of the child or the child conditional
6 in any part upon transfer or surrender of the child or the termination of parental
7 rights or the finalization of the adoption creates a rebuttable presumption of
8 coercion. Upon a finding of coercion, the court shall dismiss the petition or motion
9 to terminate parental rights or amend the agreement to delete any coercive
10 conditions, if the parties agree to the amendment. Upon a finding that payments
11 which are impermissible under s. 48.913 (4) have been made, the court may dismiss
12 the petition and may refer the matter to the district attorney for prosecution under
13 s. 948.24 (1). This paragraph does not apply if the petition or motion was filed with
14 a petition for adoptive placement under s. 48.837 (2).

15 **SECTION 54.** 48.422 (7) (br) of the statutes is amended to read:

16 48.422 (7) (br) Establish whether any person has coerced a birth parent or any
17 alleged or presumed father of the child in violation of s. 48.63 (3) (b) 5. Upon a finding
18 of coercion, the court shall dismiss the petition or motion to terminate parental
19 rights.

20 **SECTION 55.** 48.422 (8) of the statutes is amended to read:

21 48.422 (8) If the petition or motion for termination of parental rights is filed
22 by an agency enumerated in s. 48.069 (1) or (2), the court shall order the agency to
23 file a report with the court as provided in s. 48.425 (1), except that, if the child is an
24 Indian child, the court may order the agency or request the tribal child welfare
25 department of the Indian child's tribe to file that report.

ASSEMBLY BILL 630**SECTION 56**

1 **SECTION 56.** 48.422 (9) (a) of the statutes is amended to read:

2 48.422 (9) (a) If a petition or motion for termination of the rights of a birth
3 parent, as defined under s. 48.432 (1) (am), is filed by a person other than an agency
4 enumerated under s. 48.069 (1) or (2) or if the court waives the report required under
5 s. 48.425, the court shall order any parent whose rights may be terminated to file
6 with the court the information specified under s. 48.425 (1) (am).

7 **SECTION 57.** 48.423 (2) (intro.) of the statutes is amended to read:

8 48.423 (2) RIGHTS OF OUT-OF-STATE FATHERS. (intro.) A person who may be the
9 father of a nonmarital child who is not adopted or whose parents do not subsequently
10 intermarry under s. 767.803 and whose paternity has not been established may
11 contest the petition or motion to terminate parental rights, present evidence relevant
12 to the issue of disposition, and make alternative dispositional recommendations if
13 the person appears at the hearing, establishes paternity under sub. (1), and proves
14 all of the following by a preponderance of the evidence:

15 **SECTION 58.** 48.424 (1) (intro.) of the statutes is amended to read:

16 48.424 (1) (intro.) The purpose of the fact-finding hearing is to determine in
17 cases in which the petition or motion was contested at the hearing on the petition or
18 motion to terminate parental rights under s. 48.422 all of the following:

19 **SECTION 59.** 48.424 (4) (intro.) of the statutes is amended to read:

20 48.424 (4) (intro.) If grounds for the termination of parental rights are found
21 by the court or jury, the court shall find the parent unfit. A finding of unfitness shall
22 not preclude a dismissal of a petition or motion to terminate parental rights under
23 s. 48.427 (2). Except as provided in s. 48.23 (2) (b) 3., the court shall then proceed
24 immediately to hear evidence and motions related to the dispositions enumerated in
25 s. 48.427. Except as provided in s. 48.42 (2g) (ag), the court may delay making the

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1 disposition and set a date for a dispositional hearing no later than 45 days after the
2 fact-finding hearing if any of the following apply:

3 **SECTION 60.** 48.424 (4) (b) of the statutes is amended to read:

4 48.424 (4) (b) The court has not yet received a report to the court on the history
5 of the child as provided in s. 48.425 and the court now orders an agency enumerated
6 in s. 48.069 (1) or (2) to file that report with the court, or, in the case of an Indian child,
7 now orders that agency or requests the tribal child welfare department of the Indian
8 child's tribe to file such a report, before the court makes the disposition on the
9 petition or motion to terminate parental rights.

10 **SECTION 61.** 48.425 (1) (am) 2. of the statutes is amended to read:

11 48.425 (1) (am) 2. A report of any medical examination which either birth
12 parent had within one year before the date of the petition or motion to terminate
13 parental rights.

14 **SECTION 62.** 48.425 (1) (cm) of the statutes is amended to read:

15 48.425 (1) (cm) If the petition or motion is seeking the involuntary termination
16 of parental rights to an Indian child, specific information showing that continued
17 custody of the child by the parent or Indian custodian is likely to result in serious
18 emotional or physical damage to the child under s. 48.028 (4) (e) 1. and, if the Indian
19 child has previously been adjudged to be in need of protection or services, specific
20 information showing that active efforts under s. 48.028 (4) (e) 2. have been made to
21 prevent the breakup of the Indian child's family and that those efforts have proved
22 unsuccessful.

23 **SECTION 63.** 48.425 (1m) of the statutes is amended to read:

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1 48.425 (1m) The agency required under sub. (1) to file the report shall prepare
2 the medical record within 60 days after the date of the petition or motion for the
3 termination of parental rights.

4 **SECTION 64.** 48.425 (3) of the statutes is amended to read:

5 48.425 (3) The court may order a report as specified under this section to be
6 prepared by an agency in those cases where the petition or motion to terminate
7 parental rights is filed by someone other than an agency.

8 **SECTION 65.** 48.427 (2) of the statutes is amended to read:

9 48.427 (2) The court may dismiss the petition or motion to terminate parental
10 rights if it finds that the evidence does not warrant the termination of parental
11 rights.

12 **SECTION 66.** 48.43 (1) (intro.) of the statutes is amended to read:

13 48.43 (1) (intro.) The court shall enter a judgment setting forth its findings and
14 disposition in accordance with s. 48.426 in an order implementing the disposition
15 chosen. If the court dismisses the petition or motion to terminate parental rights
16 under s. 48.427 (2), the order shall contain the reasons for dismissal. If the
17 disposition is for the termination of parental rights under s. 48.427 (3), the order
18 shall contain all of the following:

19 **SECTION 67.** 48.46 (2) of the statutes is amended to read:

20 48.46 (2) A parent who has consented to the termination of his or her parental
21 rights under s. 48.41 or who did not contest the petition or motion initiating the
22 ~~proceeding in which his or her parental rights were terminated~~ termination of
23 parental rights proceeding may move the court for relief from the judgment on any
24 of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any such motion for relief
25 shall be filed within 30 days after the entry of the judgment or order terminating

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1 parental rights, unless the parent files a timely notice of intent to pursue relief from
2 the judgment under s. 808.04 (7m), in which case the motion for relief shall be filed
3 within the time permitted by s. 809.107 (5). A motion for relief under this subsection
4 does not affect the finality or suspend the operation of the judgment or order
5 terminating parental rights. A parent who has consented to the termination of his
6 or her parental rights to an Indian child under s. 48.41 (2) (e) may also move for relief
7 from the judgment under s. 48.028 (5) (c) or (6). ~~Motions~~ A motion for relief under
8 this subsection or s. 48.028 (5) (c) or (6) and appeals to the court of appeals shall be
9 the exclusive remedies for such a parent to obtain a new hearing in a termination of
10 parental rights proceeding.

11 **SECTION 68.** 48.46 (3) of the statutes is amended to read:

12 48.46 (3) An adoptive parent who has been granted adoption of a child under
13 s. 48.91 (3) may not petition the court for a rehearing under sub. (1) or move the court
14 under s. 806.07 for relief from the order granting adoption. A petition or motion for
15 termination of parental rights under s. 48.42 and an appeal to the court of appeals
16 shall be the exclusive remedies for an adoptive parent who wishes to end his or her
17 parental relationship with his or her adopted child.

18 **SECTION 69.** 48.83 (1) of the statutes is amended to read:

19 48.83 (1) Except as provided in s. 48.028 (3) (b), the court of the county where
20 the proposed adoptive parent or child resides or the court of the county where a
21 petition or motion for termination of parental rights to the child was filed or granted
22 under subch. VIII, upon the filing with that court of a petition for adoption or for the
23 adoptive placement of a child, has jurisdiction over the child until the petition for
24 adoption is withdrawn, denied, or granted. Venue in a proceeding for adoption or
25 adoptive placement of a child shall be in the county where the proposed adoptive

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1 parent or child resides at the time the petition for adoption is filed or in the county
2 where a petition or motion for termination of parental rights to the child was filed
3 or granted under subch. VIII. The court may transfer the case to a court in the county
4 in which the proposed adoptive parents reside.

5 **SECTION 70. Initial applicability.**

6 (1) This act first applies to a motion to terminate parental rights filed in a
7 proceeding for which a petition is filed under s. 48.25 on the effective date of this
8 subsection.

9 (END)